

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Candice Clipner, Esq., SBN 215379
Claire Cylkowski, Esq., SBN 335352
Prathima Price, Esq., SBN 321378
100 Pine St., Ste 1250
San Francisco, CA 94111
(858) 375-7385; (888) 422-5191 fax
Prathimap@potterhandy.com

Attorneys for Plaintiff

Philip H. Stillman, Esq. SBN# 152861
STILLMAN & ASSOCIATES
3015 North Bay Road, Suite B
Miami Beach, Florida 33140
Tel. and Fax: (888) 235-4279
pstillman@stillmanassociates.com

Attorney for Defendant

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Scott Johnson,

Plaintiff,

V.

Bistro Maxine, LLC, a California Limited Liability Company

Defendant

Case No. 3:21-cv-05777-TSH

Joint Case Management Statement

Date: August 18, 2022
Time: 10:00 a.m.
Videoconference

Honorable Judge Thomas S. Hixson

The parties submit this Joint Case Management Statement pursuant to the Standing Order for All Judges of the Northern District of California dated November 1, 2018 and Civil Local Rule 16-9.

1 **1. Jurisdiction & Service**

2 This Court has subject matter jurisdiction over this action pursuant
 3 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
 4 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5 This court has supplemental jurisdiction over the claims brought
 6 under the Unruh Act pursuant to 28 U.S.C. § 1367(a) as the claims arise
 7 from the same incident.

8 Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
 9 founded on the fact that the real property which is the subject of this action
 10 is located in this district and that Plaintiff's cause of action arose in this
 11 district.

12 Complaint was served on Defendant on or about September 18,
 13 2021.

15 **2. Facts:**

16 Plaintiff: Scott Johnson is a level C-5 quadriplegic. He cannot walk
 17 and has significant manual dexterity impairments. He uses a wheelchair
 18 for mobility and has a specially equipped van. Defendant Bistro Maxine,
 19 LLC owns Bistro Maxine ("Restaurant") located at or about 548 Ramona
 20 St, Palo Alto, California.

21 On the dates of the plaintiff's visits, the defendants failed to provide
 22 wheelchair accessible outside dining surfaces in conformance with the
 23 ADA Standards as it relates to wheelchair users like the plaintiff. One
 24 problem that plaintiff encountered was the lack of sufficient knee or toe
 25 clearance under the outside dining surfaces for wheelchair users.

26 Defendant's failure to provide for wheelchair accessible dining
 27 surfaces at the Restaurant is a violation of the ADA and is discriminatory
 28 against the plaintiff. Defendant violates plaintiff's rights under the

1 American with Disabilities Act and the Unruh Civil Rights Act. Plaintiff
2 seeks injunctive relief and the statutory minimum damage award.

3 Defendant: Mr. Johnson, who is disabled, has sued 572 businesses
4 in the Northern District of California over the past twelve months, all of
5 which are more than 100 miles from his residence, which is located in the
6 Eastern District of California. This does not include the other
7 approximately 2,000 businesses that Johnson has sued in the Northern
8 District over the past five years. Defendants contend that Mr. Johnson
9 *personally* did not experience any alleged barriers, had no *bona fide* intent
10 to patronize Defendant's business, and did not have and continues not to
11 have a *bona fide* intent to return to the business. Moreover, it is undisputed
12 from the Joint Site Inspection that there is sufficient and compliant outdoor
13 seating. Johnson disputes whether there was compliant accessible outdoor
14 seating at all times relevant to the complaint, at least prior to the Joint Site
15 Inspection. Accordingly, Defendants will be seeking limited jurisdictional
16 discovery as allowed in several other *Johnson* cases, and an evidentiary
17 hearing before this Court, where this Court can determine these issues and
18 judge Mr. Johnson's credibility.

19

20 **3. Legal Issues**

21 The disputed legal issues are: (1) Whether the defendant's property
22 meets the minimum standards of the ADA; state disability laws and other
23 codes; (2) whether the defendants are responsible under the law to remove
24 barriers purported to be present; (3) whether the barriers purported to be
25 present are readily achievable to remove; (4) whether the plaintiff has
26 standing to seek either damages or injunctive relief; and (5) the nature and
27 extent of damages, if any.

1 **4. Motions**

2 Plaintiff: anticipates filing a motion for partial summary judgment
3 on the issue of duty and liability under the ADA and the Unruh Civil Rights
4 Act. This will happen after the necessary depositions are taken in this case.

5 Defendant: anticipates filing a Motion for Judgment on the
6 Pleadings on the issue of subject matter jurisdiction, or if necessary, a
7 Motion for Summary judgment. Defendants also intend to ask this Court
8 to decline subject matter jurisdiction.

9

10 **5. Amendment of Pleadings**

11 Plaintiff: Plaintiff intends to conduct an expert led site inspection to
12 identify each barrier that would affect his type of disability and, then,
13 amend the complaint to ensure that the ADA claim reflects his intention to
14 have all unlawful barrier removed or remediated. This is the two-step
15 process permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008)
16 524 F.3d 1034 and *Chapman v. Pier 1 Imports (US) Inc.*, 631 F.3d 939 (9th
17 Cir. 2011).

18 Defendant: Defendant does not anticipate any need to amend the
19 pleadings.

20

21 **6. Evidence Preservation**

22 The Parties agree to make efforts to preserve all discoverable
23 information, regardless of the format in which it is kept (email, database,
24 paper file, etc.).

25 The parties are unaware of any issues in this regard at this time.

26 //

1 **7. Disclosure**

2 The Parties do not seek any changes to the form or requirements for
3 initial disclosures. The parties have exchanged initial disclosures.
4

5 **8. Rule 26 Discovery Plan**

6 **1. Discovery Subjects**

7 Plaintiff intends to seek discovery related to: (1) the ownership
8 and operation of the business; (2) lack of wheelchair accessible
9 dining surface at the Restaurant; (3) changes or modifications to the
10 property; (4) the feasibility of providing access to persons with
11 disabilities. Plaintiff intends to propound a set of Interrogatories,
12 Requests for Admission and Requests for Production of Documents;
13 to take the deposition of Defendant and to conduct an expert site
14 inspection.

15 **Defendant:**

16 Defendant intends to seek discovery related to (1) Johnson's
17 litigation history, both at the time in question and previously, (2)
18 whether he actually visited the business as alleged in the Complaint,
19 (3) Johnson's avowed status as a "tester", (4) whether Johnson
20 experienced any barriers, (5) whether Johnson had and has a bona
21 fide intent to return to the business and (6) whether Johnson had a
22 bona fide intent to patronize the business at the time of his purported
23 visit(s). Defendant intends to propound a set of Interrogatories,
24 Requests for Admission and Requests for Production of Documents;
25 to take the deposition of Johnson, and if necessary, any designated
26 expert.

1 The Parties do not propose to conduct discovery in phases. The
2 parties agree to electronic service in this matter. Documents sent to
3 the appropriate e-mail addresses for the respective parties below
4 shall be deemed served the day it is received by e-mail if received
5 before 5:00 PM PST, or the following weekday if served after. The
6 parties agree that service under this agreement shall be entitled to
7 the benefits of FRCP 6(d). Either party may modify their service list
8 by providing notice to the below listed service addresses with the
9 new e-mail addresses to be served.

10 Plaintiff: serve@potterhandy.com and Candicec@potterhandy.com

11 Defendant: pstillman@stillmanassociates.com

12 **2. Changes in Limitations on Discovery**

13 The parties request no deviation from the Federal and Local Rules.

14 **9. Class Actions**

15 N/A.

16 **10. Related Cases**

17 Plaintiff is unaware of any related cases.

18 Defendant contends that, at a minimum, the following cases are
19 related:

20 Johnson v. Yuan Corporation (5:21-cv-05817-BLF) (273 Castro St,
21 Mountain View, CA 94041)

22 Johnson v. Robert S. Fischer (236 Hamilton Ave, Palo Alto, CA
23 94301)

1 Johnson v. Vinh Hang Restaurant Corp. (3:21-cv-08338-RS) (1065
2 Holly St, San Carlos, CA 94070)
3 Johnson v. Jasmine Kocha Corp (3129 Meridian Ave., San Jose, CA
4 95124)
5 Johnson v. Decker Oaks Investors, LLC (384 University Ave, Palo
6 Alto, CA 94301)
7 Johnson v. Taste PA Inc. (5:21-cv-05766-BLF) (423 University Ave,
8 Palo Alto, CA 94301)
9 Johnson v. Oasis Enterprise LLC (1040 Grant Rd, Mountain View,
10 CA 94040)
11 Johnson v. Siam Royal, Inc. (338 University Ave, Palo Alto, CA
12 94301)
13 Johnson v. Burma Ruby Investment LLC (326 University Ave, Palo
14 Alto, CA 94301)
15 Johnson v. Oneteam Restaurant PA, LP (185 University Ave, Palo
16 Alto, CA 94301)
17 Johnson v. Mint Leaf Cuisine LLC (217 N Santa Cruz Ave, Los Gatos,
18 CA 95030)
19 Johnson v. Strawberry Park, LLC (603 Saratoga Ave, San Jose, CA
20 95129)
21 Johnson v. Tea Cub Parlor Inc. (175 E El Camino Real, Mountain
22 View, CA 94040).
23

24 **11. Relief**

25 Plaintiff: claims injunctive relief, attorney fees and damages under
26 the Unruh Civil Rights Act, which provides for actual damages and a
27 statutory minimum of \$4,000.
28

1 Defendant: seeks a dismissal with prejudice, and reasonable
2 attorney's fees if appropriate.

3

4 **12. Settlement and ADR**

5 The parties attended a Settlement Conference on July 21, 2022,
6 before Magistrate Judge Sallie Kim, but have been unable to reach a
7 settlement in this case.

8

9 **13. Consent to Magistrate Judge for All Purposes**

10 Plaintiff: consents to have a Magistrate Judge preside over this case.

11 Defendant: consents to have a Magistrate Judge preside over this
12 case.

13

14 **14. Other References**

15

16 None

17

18 **15. Narrowing of issues**

19 None

20

21 **16. Expedited Trial Procedure**

22 The parties do not believe that this case is suitable for an expedited
23 schedule.

24

25 **17. Scheduling**

26

27 Plaintiff proposes:

28 The date for Disclosures of Expert Witness as July 3, 2023
Discovery Cut-Off of August 14, 2023

1 Law and Motion Cut-Off of September 11, 2023
2 Pre-trial Conference date of October 23, 2023
3 Trial date of November 7, 2023
4 Defendant proposes:

5 The date for Disclosures of Expert Witness as July 3, 2023
6 Discovery Cut-Off of August 14, 2023
7 Law and Motion Cut-Off of September 11, 2023
8 Pre-trial Conference date of October 23, 2023
9 Trial date of November 7, 2023

10
11 **18. Trial**

12 Plaintiff: has requested a Court trial and anticipates a 2-3 day trial.
13 Defendant: anticipates a 2-3 day bench trial.

14
15 **19. Disclosure of Non-Party Interested Entities or Person**

16 Plaintiff: There are no interested parties other than the Plaintiff.

17 Defendant: There are no interested parties other than the
18 Defendant(s).

19
20 **20. Professional Conduct**

21 Counsel have reviewed the Guidelines for Professional Conduct for
22 the Northern District of California.

23
24 **21. Other Matters**

25 None
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28

1 Dated: August 10, 2022

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5 CENTER FOR DISABILITY ACCESS

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9 By: /s/Prathima Price
10 Prathima Price
11 Attorney for Plaintiff

12 Dated: August 10, 2022

13 STILLMAN & ASSOCIATES

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16 By: /s/Philip H. Stillman
17 Philip H. Stillman, Esq.
18 Attorney for Defendant

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SIGNATURE ATTESTATION

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

Dated: August 10, 2022

CENTER FOR DISABILITY ACCESS

By: s/Prathima Price
Prathima Price
Attorney for Plaintiff

EXHIBIT A**PROPOSED SCHEDULE OF PRETRIAL & TRIAL DATES**

Matter	Weeks Before Trial	Parties Request
Last Day for Hearing on Motion to Add Parties and Amend Pleadings (Monday at 10:00 a.m.)	25	5/15/2023
Non-Expert Discovery Cut-Off	15	7/24/2023
Expert Discovery Cut-Off	12	8/14/2023
Last Day to Conduct Settlement Proceedings	10	8/28/2023
Last Day for Law and Motion Hearings	8	9/11/2023
Final Pretrial Conference (Monday at 1:30 p.m.)	2	10/23/2023
Last Day for Filing Proposed Findings of Facts and Conclusions of Law (if court trial)	1	10/30/2023
Exhibit Conference (Friday at 3:00 p.m.)	Friday before Trial	11/3/2023
Trial (Tuesday at 9:00 a.m.)		11/7/2023